

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0184P
Tax Administration—Penalty
For the Year 1999**

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ISSUES

I. Tax Administration—Penalty

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.1

Taxpayer protests the assessment of the 10% negligence penalty.

STATEMENT OF FACTS

The Department, after reviewing all the materials in the above-captioned penalty protest, and all relevant statutes and administrative regulations, denies taxpayer's requested relief, for the following reasons.

The penalty was proposed in the first instance because the auditor determined taxpayer had not self-assessed and remitted use tax even though taxpayer was aware of its duty to do so. A supplemental audit revealed that taxpayer was owed a refund based on taxes remitted to the Department with taxpayer's ST-103 forms. Therefore, taxpayer's initial tax liability was reduced from \$4,119.06, plus penalty and interest, to \$1,413.25, plus penalty and interest. Taxpayer received a refund of \$3,648.21. Taxpayer filed its letter of protest in May of 2003, requesting an abatement of the penalty, but listed the interest amount assessed, not the penalty amount. On the same day that taxpayer mailed its protest letter, the Department issued its refund letter and check to taxpayer. They apparently crossed in the mail.

The Department then requested that taxpayer send further information that would support a waiver of the penalty assessed, \$141.32, on the proper amount of tax due.

I. Tax Administration-Penalty

DISCUSSION

Taxpayer has not sent in any further information. Interest is imposed by statute, and cannot be waived. Penalty assessments depend on a number of factors outlined in the statute and

regulation cited *supra*, and can be waived based on a showing of sufficient cause. Since taxpayer has not made this showing, the Department denies taxpayer's request to abate the penalty assessment.

FINDING

Taxpayer's request to abate the 10% negligence penalty is denied.